No. 919 252

WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

FIRST NATIONAL BANK IN ST. LOUIS,
Plaintiff in Error and Petitioner in Certiorari,

vs.

STATE OF MISSOURI, UPON INFORMATION OF JESSE W. BARRETT, Attorney-General,
Defendant in Error and Respondent in Certiorari.

MOTION OF PLAINTIFF IN ERROR AND PETITIONER IN CERTIORARI TO ADVANCE.

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
EUGENE H. ANGERT,
Counsel for Plaintiff in Error and Petitioner in Certiorari.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Main 1819, Central 919.

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vs.
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Defendant in Error and Respondent in Certiorari.

MOTION OF PLAINTIFF IN ERROR AND PETITIONER IN CERTIORARI TO ADVANCE.

MAY IT PLEASE THE COURT:

The State of Missouri, through her Attorney-General, filed before the Supreme Court of that State an information in quo warranto, asserting that the plain-

tiff in error and petitioner was a national banking association; that, by its articles of association and certificate, the City of St. Louis in that State, was designated as the place where its business activities were to be conducted; that it had in that city a banking house; and had recently opened a branch thereof at another point in the city, and proposed to have still others therein; and that under the Acts of Congress in relation to that subject matter, the plaintiff in error was without authority to maintain such branch offices.

The State Supreme Court held that the State had the right to so proceed; and denied the power of the plaintiff in error to have such branch offices.

The plaintiff in error has sued out a writ of error here; and, in doubt as to the proper basis of review, has also applied for a writ of certiorari.

The plaintiff in error now asks that the cause be advanced for hearing, because—

1. The power of the State to so control national banks is a question which concerns the fundamental relations between the National and State Governments; and, hence, is a question which concerns the United States, all the states of the Union, and all the national banks of the country.

2. This Court has never had occasion to inquire as to the powers of national banks in the regard here in controversy. It is a question in which all the national banks chartered by Congress are vitally interested, as well as their various patrons and the public at large, in all the cities and towns of the country where such institutions are located.

3. The State of Missouri is a party hereto and under Sec. 949, Rev. Stats. (Sec. 1581, U. S. Comp. Stats. for 1916), this cause is entitled to a hearing in advance of all civil causes between private parties now pending on the docket of this court.

4. Shortly prior to the institution of this proceeding, the plaintiff in error opened, established and equipped in the City of St. Louis, a branch office for the conduct of a portion of its banking business; and equipped leaseholds at three other points in said city for the same purpose and provided the necessary equipment and clerical force for those as well—aiming at the extension of its banking business and the better accommodation of its customers and the public. These places have not been opened for business, because of an injunction granted by the State Court when this proceeding was instituted.

The plaintiff in error, therefore, respectfully asks

that the case be ordered advanced upon the docket of the Court.

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
EUGENE H. ANGERT,
Counsel for Plaintiff in Error and Petitioner in Certiorari.

State of Missouri, }
City of St. Louis. } ss.

F. O. WATTS of the City of St. Louis and State of Missouri, being duly sworn, upon his oath states that he is President of the First National Bank in St. Louis; that he has read the foregoing motion to advance and the matters and things therein set forth are true as he truly believes.

(signed) F. O. Watts

Subscribed and sworn to before me this 23. day of March, 1923.

My commission expires October 24. 1926

(signed) N. W. Heidemann
Notary Public.

(seal)

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Plaintiff in Error and Petitioner in Certiorari,

vs.

STATE OF MISSOURI Upon Information of JESSE W. BARRETT, Attorney General,
Defendant in Error and Respondent in Certiorari.

APPLICATION FOR SUPERSEDEAS OR STAY OF PROCEEDINGS OR INJUNCTION, WITH SUGGESTIONS IN SUPPORT.

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
EUGENE H. ANGERT,
Counsel for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Main 1819, Central 919.

IN THE

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FIRST NATIONAL BANK IN ST. LOUIS,
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Defendant in Error and Respondent in Certiorari.

APPLICATION FOR SUPERSEDEAS OR STAY OF PROCEEDINGS OR INJUNCTION.

And now comes the petitioner herein, First National Bank in St. Louis, and respectfully shows to the Court:

1. In this cause the petitioner has sued out a writ of error to this Court from the judgment of the Supreme Court of the State of Missouri, and the record has been returned into this court.

2. In doubt as to whether all the questions arising upon the record are reviewable by this Court upon a writ of error, the petitioner has also applied here for a writ of *certiorari;* and that application is now pending.

3. The petitioner is a banking association, organized and existing under the laws of the United States, and authorized by its articles of association and certificate of incorporation to engage in the banking business in the City of St. Louis, in the State of Missouri.

4. Shortly prior to the institution of this proceeding the petitioner opened, established and equipped, in the City of St. Louis, a branch office for the conduct of a portion of its banking business, and acquired leaseholds at three other points in said city for the same purpose, and provided the necessary equipment and clerical force for those as well—aiming at the extension of its banking business and the better accommodation of its customers and the public.

5. Whereupon the State of Missouri, through its Attorney-General, Jesse W. Barrett, filed before and with the Supreme Court of that state, on June 27, 1922, its information in *quo warranto,* asserting that under the acts of Congress relating to national banking associations the petitioner was without authority

to have and maintain branch offices in St. Louis for the conduct of its banking business; praying an injunction pending the action, and a final judgment ousting the petitioner of the franchise of maintaining such branch offices (Rec., p. 1).

6. On June 29, 1922 (Rec., p. 5), the Supreme Court of Missouri granted its order to show cause.

7. In due course the Supreme Court of Missouri entered its judgment March 3, 1923, ousting the petitioner from the franchise of having or maintaining any such branch offices (Rec., p. 14).

8. At the time the proceeding was instituted, and notwithstanding the inhibitory provisions of R. S. U. S., Section 5242, the state procured from the state court an injunction restraining the petitioner from establishing such branch offices (other than the one then in operation); and maintained the same (notwithstanding the provisions of that statute) until the final determination of the cause against efforts of the petitioner to obtain its dissolution (Rec., p. 7).

9. On allowing the writ of error the Chief Justice of the Supreme Court of Missouri approved a bond and ordered that the writ of error operate as a supersedeas. (Order appears only in record returned

(Note.—All references are to printed record submitted on application for writ of *certiorari*.)

with the writ of error, which has not yet been printed.)

10. The petitioner is advised by its counsel that there is doubt whether a judgment of this character may be stayed, pending the determination of the cause here, except on special order of this Court under R. S. U. S., Section 716 (Judicial Code, Sec. 262, Comp. St., Sec. 1239).

11. Under the judgment of the Supreme Court of Missouri if not superseded, or the enforcement thereof otherwise stayed, the petitioner must dismantle the branch office which it has established, and refrain from so using others which it had acquired for the purpose, to its great financial hurt and detriment (without hope of recompense) pending the time when this Court, in ordinary procedure, may reach and determine this cause.

12. The petitioner is advised by its counsel that under the acts of Congress relating to banking associations, it possesses the power it seeks to exercise; and, also, that an inquiry therein is the sole prerogative of the Government of the United States and not that of the State of Missouri.

Wherefore, the petitioner prays that a writ of supersedeas may issue herein, staying the enforcement of the judgment of the Supreme Court of Mis-

souri pending judgment here; or that an order issue herein staying further proceedings pending the determination of the cause here; or, if deemed more appropriate to the situation, that a writ of injunction issue, directed to Jesse W. Barrett, Attorney-General of the State of Missouri, restraining him, his associates, assistants and subordinates from enforcing the judgment pending final determination of the cause here; and for such other writs and processes as may seem meet and proper in the premises.

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
EUGENE H. ANGERT,
Counsel for Petitioner.

United States of America,
State of Missouri,
City of St. Louis. } ss.

Frank O. Watts, being duly sworn, on his oath says that he is president of the First National Bank in St. Louis, and that he has read, and is familiar with, the foregoing application, and that the facts herein stated are true.

Frank O. Watts.

Subscribed and sworn to before me, this 30th day of March, 1923.

My commission expires October 24, 1926

Signed H. W. Hedemeier
.....
Notary Public.

(Seal)

SUGGESTIONS IN SUPPORT OF APPLICATION FOR SUPERSEDEAS OR STAY OF PROCEEDINGS OR INJUNCTION.

Under Revised Statutes U. S., Section 1007, as amended (Comp. St., Sec. 1666), a writ of error becomes a supersedeas, upon filing a bond, only in case the judgment is of a type which may be superseded without special order here. (See the observations of Mr. Justice Bradley in Hovey v. McDonald, 109 U. S., at page 159 *et seq.*, and of Mr. Justice Waite, in Leonard v. Ozark Land Co., 115 U. S. 467.)

While this Court has recognized a writ of error, with bond, a superseding judgment in *quo warranto* (U. S. *ex rel.* Crawford v. Addison, 22 How. 184; *Id.* v. *Id.*, 6 Wall. 296, and Foster v. Kansas, 112 U. S. 204) it is not to be overlooked that those were each proceedings, at the instance of private relators, to determine title to office. The judgments were probably not self-executing. It may well be doubted whether the judgment in the case at bar is controlled by the same considerations. The order of the Chief Justice of the state court cannot change the character of the judgment (Hovey v. McDonald, 109 U. S. 150, 161).

But under the broad and elastic provisions of Section 262 of the Judicial Code (Comp. St., Sec. 1239)

this Court, in the exercise of its appellate jurisdiction, may grant a supersedeas, or any other writ appropriate to preserve the rights of parties litigant pending the determination of the cause here. It is a power which has often been exercised. It was availed of in Hardeman v. Anderson, 4 How. 640, to allow a supersedeas and suspend the enforcement of the judgment below pending review here, albeit the act of Congress then in force was not nearly so comprehensive in terms as the present statute.

In Milwaukee Railroad Company *ex parte*, 5 Wall. 190, Mr. Justice Miller, speaking for the Court, said:

> "The case being properly in this court by appeal, we have, by the fourteenth section of the Judiciary Act, a right to issue any writ which may be necessary to render our appellate jurisdiction effectual. For this purpose the writ of *supersedeas* is eminently proper in a case where the circumstances justify it, as we think they do in the present instance."

In re Claasen, 140 U. S. 207, Mr. Justice Blatchford said:

> "That this court, as a court, has power to issue a writ of *supersedeas* under Section 716 of the Revised Statutes is quite clear, for that section gives it power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of its jurisdiction and agreeable

to the usages and principles of law (*Hardeman v. Anderson*, 4 How. 640; *Ex Parte Milwaukee Railroad Co.*, 5 Wall. 188)."

In re McKenzie, 180 U. S. 549, Mr. Chief Justice Fuller, speaking for the Court, observed:

> "That this court, as a court, has power to issue a writ of *supersedeas* under Section 716 of the Revised Statutes is clear, for that section concedes its power to issue writs not specifically provided for by statute which may be necessary for the exercise of its jurisdiction and agreeably to the usages and principles of law. * * *
>
> "Although the issue of the writ is not ordinarily required, there are instances in which it has been done, under special circumstances, and in furtherance of justice (*Stockton v. Bishop*, 2 How. 74; *Hardeman v. Anderson*, 4 How. 640; *Ex parte Milwaukee Railroad*, 5 Wall 188)."

In Omaha etc. Railway Co. v. Interstate Commerce Commission, 225 U. S. 585, under the authority of this statute, an order was entered suspending the enforcement of an order of the Interstate Commerce Commission, self-executing in terms, and the enforcement of which pending appeal would work injury to the appellant, for which there was no redress.

In Hartford Life Insurance Co. v. Johnson, No. 232 of the October Term, 1921, under this statute the prosecution of an action on an appeal bond to the

state court was enjoined pending the determination of an appeal here in an action to enjoin the enforcement of the judgment of the state court to supersede which the bond had been given. No doubt there are other instances of a similar kind with which the Court is familiar but we are not.

The necessity of such relief here is manifest. This bank may be right in its contentions. They are inherently federal questions, and are, therefore, not at rest until this Court has spoken concerning them.

If in the meantime the plaintiff in error must obey the order of the state court its loss is certain, immediate and without hope of return, because the state does not deign to reimburse those whose business activities it may have interrupted through the mistaken zeal of its officials.

A writ of supersedeas or an order staying further proceedings pending the determination of the cause by this Court would seem to suffice, but an injunction directed to the Attorney-General of the state is no invasion of the sovereignty of the state (*Ex Parte* Young, 209 U. S. 149 *et seq.*) and may be the more appropriate remedy.

It is respectfully submitted that one or the other should issue, dependent upon which the Court may

regard as the more appropriate under the circumstances.

JAMES C. JONES,
LON O. HOCKER,
FRANK H. SULLIVAN,
EUGENT H. ANGERT,
Counsel for Petitioner.